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SERVICE DATE - FEBRUARY 14, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-6 (Sub-No. 402X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
–ABANDONMENT EXEMPTION–
IN KING COUNTY, WA

Decided: February 12, 2003

On December 27, 2002, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its 0.17-mile line of railroad between Station 258 + 07 and Station 267 + 00, in Seattle, King County, WA. Notice of the exemption was served and published in the Federal Register on January 16, 2003 (68 FR 2397). The exemption is scheduled to become effective on February 15, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 21, 2003. In the EA, SEA states that the U.S. Department of the Interior, Western Washington Fish and Wildlife Office in Lacey, WA, has indicated that a Bald Eagle nesting territory and a species of fish known as the Bull Trout are both located in the vicinity of the line. SEA recommends that an environmental condition be imposed requiring that, before any salvage activities are undertaken, BNSF shall consult with the U.S. Department of the Interior, Western Washington Fish and Wildlife Office, to evaluate the potential impacts to the Bald Eagle and Bull Trout in the vicinity of the line. Comments to the EA were due by February 5, 2003. No comments were received by the due date. Accordingly, the environmental condition recommended by SEA in the EA will be imposed.

On December 26, 2002, the City of Seattle (City) filed a request for the issuance of a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The City submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required by 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation for rail service. By letter filed on February 6, 2003, BNSF indicated that it is willing to negotiate with the City.

Because the City's request complies with the requirements of 49 CFR 1152.29 and BNSF is

willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

Also on December 26, 2002, the City filed a petition, under 49 U.S.C. 10502, to exempt the proposed abandonment from the offer of financial assistance (OFA) requirements of 49 U.S.C. 10904. The notice of exemption stated that formal notice of an intent to file an OFA had to be filed by January 27, 2003, the required time limit prescribed by 49 CFR 1152.27(c)(2). The Board's records indicate that no OFAs and no notices of intent to file an OFA have been filed in this proceeding. Therefore, the petition is now moot and will be dismissed.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on January 16, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice (until August 13, 2003), and subject to the condition that, before any salvage activities are undertaken, BNSF shall consult with the U.S. Department of the Interior, Western Washington Fish and Wildlife Office, to evaluate the potential impacts to the Bald Eagle and Bull Trout in the vicinity of the line.
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future reactivation of rail service and to the user's continuing to meet the financial obligations of the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified

date.

6. If an agreement for interim trail use/rail banking is reached by August 13, 2003, interim trail use may be implemented. If no agreement is reached by that time, BNSF may fully abandon the line, provided the conditions imposed in this proceeding are met. See 49 CFR 1152.29(d)(1).

7. The petition for exemption from the requirements of 49 U.S.C. 10904 is dismissed as moot.

8. The decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary